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25 UNITED STATES DISTRICT COURT
26 FOR THE NORTHERN DISTRICT OF CALIFORNIA
27 SAN FRANCISCO DIVISION

28 AMERICAN FEDERATION OF
GOVERNMENT EMPLOYEES, AFL-CIO,
et al.,

Plaintiffs,

v.

DONALD J. TRUMP, in his official capacity
as President of the United States, et al.,

Defendants.

Case No. 3:25-cv-03698-SI

**PLAINTIFFS' OPPOSITION TO
DEFENDANTS' ADMINISTRATIVE
MOTION FOR STAY OF DEADLINES
AND PROCEEDINGS IN LIGHT OF
LAPSE OF APPROPRIATIONS**

1 Plaintiffs oppose Defendants' motion for an indefinite stay pending the conclusion of the
 2 federal government shutdown that began on October 1, 2025. ECF 273. This case can and should
 3 proceed notwithstanding the lapse in federal appropriations, for several reasons.

4 1. In support of their motion, Defendants assert that a stay is necessary because, under
 5 the Antideficiency Act, "Department of Justice attorneys and most employees of the Federal
 6 Defendants are prohibited from working, even on a voluntary basis, except in very limited
 7 circumstances." ECF 273 at 2. However, counsel for Defendants may continue working on this
 8 case if otherwise "authorized by law." 31 U.S.C. § 1341(a)(1)(B). The Department of Justice
 9 interprets this provision (as DOJ has in past government shutdowns) to mean that DOJ attorneys
 10 must generally request a stay of ongoing litigation, but "[i]f a court denies such a request and
 11 orders a case to continue, the Government will comply with the court's order, which would
 12 constitute express legal authorization for the activity to continue." *U.S. Department of Justice FY*
 13 *2026 Contingency Plan 3* (Sept. 29, 2025), available at: <https://perma.cc/UNK2-F7SE>. "With
 14 respect to litigation, the Department's [contingency] plan assumes that the Judicial Branch will
 15 continue to operate, though possibly at a reduced level, through the lapse." *Id*; *see also Kornitzky*
 16 *Group, LLC v. Elwell*, 912 F.3d 637, 638 (D.C. Cir. 2019) (Srinivasan, J., concurring) (concluding
 17 that the denial of a stay amounts to legal authorization for DOJ attorneys to continue working).
 18 Courts regularly deny requests by the federal government to stay briefing or argument due to a
 19 government shutdown. *Id.* at 638–39; *see also People for the Ethical Treatment of Animals v. U.S.*
 20 *Dep't of Agric.*, 912 F.3d 641 (D.C. Cir. 2019); *Air Transp. Ass'n of Am., Inc. v. FAA*, 912 F.3d
 21 642 (D.C. Cir. 2019); *Priests For Life v. HHS*, No. CV 13-1261, 2013 WL 5572730, at *1 (D.D.C.
 22 Oct. 2, 2013). Counsel for Defendants may therefore lawfully continue working if the Court denies
 23 the requested stay.

24 2. The same is true for agency counsel and support staff. Defendants' motion
 25 equivocates that work by agency staff "may not be possible." ECF 273 at 2 (emphasis added). But
 26 the same interpretation of the Antideficiency Act in DOJ's contingency plan would apply to all
 27 Federal Defendant Agencies. Indeed, various agency contingency plans acknowledge that

1 employees can receive exceptions from being furloughed to continue required litigation activities.¹
 2 And, not all agency Defendants are subject to furlough, as Defendants implicitly admit. Mot. ¶1
 3 (“the majority of other Executive agencies...”).

4 3. Defendants fail to explain that 89 percent of DOJ employees are already excepted
 5 from the furlough, including the majority of employees of the Civil Division. *U.S. Department of*
 6 *Justice FY 2026 Contingency Plan* 3 (Sept. 29, 2025) at *2, 12, available at:
 7 <https://perma.cc/UNK2-F7SE>.

8 4. Denying a stay is appropriate given the importance and subject matter of this case.
 9 *E.g., United States v. US Airways Grp., Inc.*, 979 F. Supp. 2d 33, 35 (D.D.C. 2013) (denying stay
 10 during shutdown due to significance of matter to both sides). Plaintiffs challenge the unlawful
 11 reorganization of the federal government including through large-scale reductions-in-force, and the
 12 harms that this Court recognized in issuing a preliminary injunction, *see* ECF 124 at 13–17, 44–45,
 13 are continuing because of the Supreme Court’s stay of the injunction. In fact, the federal
 14 government is now threatening to “use this opportunity” of a shutdown to conduct further
 15 reductions in force. *AFGE v. OMB*, No. 25-cv-08302 (N.D. Cal.), ECF 1-1 at 2 (September 2025
 16 OMB memorandum). It therefore is possible that Defendants may take further action during the
 17 course of this government shutdown that implicates the claims in this case. Defendants’ open-
 18 ended stay request, if granted, would delay and potentially thwart judicial review of these
 19 important issues, and thereby this Court’s exercise of its own constitutional functions, for an
 20 indeterminate period of time.

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 24 1 *E.g.*, USDA Contingency Plan at 48, <https://www.usda.gov/sites/default/files/documents/fy2026-usda-lapse-plan.pdf> (Office of General Counsel attorneys and staff will be excepted where “continued service is implied from the Constitutional function of the judiciary for cases in litigation that are not postponed during the shutdown”); EPA Contingency Plan at 1, https://www.epa.gov/system/files/documents/2025-09/epa-contingency-plan-9_29_25.pdf (“Legal counseling, litigation and law enforcement activities as required”); Labor Department Contingency Plan at 59, <https://www.dol.gov/sites/dolgov/files/general/plans/dol-contingency-plan.pdf> (Office of the Solicitor will allow furlough exception “to meet potential litigation demands during shutdown”).

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Respectfully submitted,

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